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July 27, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation in CC Docket No. 95-185

Dear Secretary Salas:

On behalf of New England Voice & Data, LLC ("NEVD"), I am hereby filing the attached letter from Scott A. Sawyer of NEVD to Jake Jennings of the Common Carrier Bureau. In the letter, Mr. Sawyer provides follow-up information requested by Mr. Jennings regarding the treatment of dark fiber as an unbundled network element. Pursuant to Section 1.1206(b)(1) of the Commission's rules, I am filing two copies of this letter and the attachments in the above-referenced docketed proceeding.

Sincerely,

Thomas Jones

Attachments

cc: Jake Jennings
Claudia Fox
Chris Libertelli
Bill Sharkey
John Reel

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July 23, 1999

HAND-DELIVERED

Jake E. Jennings
Special Advisor
Federal Communications Commission
Common Carrier Bureau
Policy and Program Planning Division
444 12th Street, SW
Washington, DC 20554

Re: **ILEC and CLEC Reservation of Dark Fiber**

Dear Mr. Jennings:

In our recent ex parte meeting of July 14, 1999, you asked New England Voice & Data, LLC ("NEVD") for further comment concerning whether the FCC should be concerned about ILEC and/or CLEC reservation of dark fiber. At the outset, it should be understood that ILECs are in fact currently warehousing dark fiber by refusing to provide it to CLECs as an unbundled network element. CLECs, in contrast, have every incentive to use dark fiber efficiently. In short, unlike ILECs, CLECs have no incentive to sit on dark fiber. The Commission should reject ILEC attempts to continue to reserve dark fiber for themselves and add dark fiber to the list of unbundled network elements that ILECs have to make available on a national basis.

Having said that ILECs should be prohibited from warehousing dark fiber, NEVD accepts that if an ILEC has a bona fide reason to reserve some dark fiber strands, it shouldn't be required to make those strands available to CLECs. Such a bona fide reason, however, must be clearly documented, lest it be used as an artificial barrier to competition.

The Massachusetts Department of Telecommunications and Energy ("DTE") has considered this very matter and ruled that "a general statement by [Bell Atlantic] that a fiber is needed for unspecified or general future growth, or even for a particular customer's potential long term growth, will not suffice to relieve it of its obligation to offer the dark fiber [as a UNE]." *Consolidated Petitions of New England Telephone and Telegraph Company* d/b/a NYNEX, et. al, DPU 96-73/74, 96-75, 96-80/81, 96-94 Phase 3 Order, dated December 4, 1996, at pp. 49, 50. A true and accurate copy of the relative pages from the DTE's Order is attached to this letter as Exhibit 1. Rather, Bell Atlantic would have to demonstrate that it has "installed or allocated [dark fiber] to serve a particular customer in the near future." *Id.* NEVD believes that the DTE's

determination on this matter is workable and fair and results in the most efficient use of dark fiber.

NEVD opposes a rule that would allow an ILEC to revoke fiber from a CLEC if the ILEC can demonstrate that the dark fiber is needed to meet its or another CLEC's bandwidth requirement. Such a rule is unnecessary, administratively cumbersome, and likely to result in disputes about possible discriminatory treatment. If the pricing for dark fiber is properly set at TELRIC prices, carriers will use dark fiber efficiently. Similarly, NEVD opposes a rule that would restrict the percentage of dark fiber that a CLEC could use. The better path for the Commission to follow is to provide for the allocation of fiber without restriction on a first come, first served basis, as is the case with requests for access to ILEC conduit and poles.

I hope these comments are helpful.

Respectfully submitted,

Scott A. Sawyer
Vice President of Regulatory Affairs
New England Voice & Data, LLC

Enclosure

SAS/skm

D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94 -- Phase 3

Consolidated Petitions of New England Telephone and Telegraph Company d/b/a NYNEX, Teleport Communications Group, Inc., Brooks Fiber Communications, AT&T Communications of New England, Inc., MCI Communications Company, and Sprint Communications Company, L.P., pursuant to Section 252(b) of the Telecommunications Act of 1996, for arbitration of interconnection agreements between NYNEX and the aforementioned companies.

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-and-

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FOR: NEW ENGLAND TELEPHONE &
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-and-

approach and the AT&T approach to access charges. We adopt MCI's formulation, in that it makes it clear (by netting out the forwarding carrier's access charge) that the total access charges collected by the two carriers cannot exceed the amount that would have been collected by a single local exchange carrier in a non-INP environment.

G. Dark Fiber

1. Introduction

Dark fiber consists of a fiber optic strand that is in place in a network but is not connected to electronic equipment needed to power the line in order to transmit information. AT&T and MCI have asked that they be provided access to NYNEX's dark fiber and lease it as an unbundled network element.

2. Positions of the Parties

a. NYNEX

NYNEX asserts that such a request should not be allowed because it is not required by the Act or the Local Competition Order, nor is it in the public interest. NYNEX notes that AT&T has the ability to purchase and build fiber cables for itself. It asserts, therefore, that the "impairment standard" established in the Act to identify unbundled elements which should be made available to competitors in order to promote competition would not be met. NYNEX also raises a series of operational, security, maintenance, billing, and capacity concerns that, it contends, make imposition of a leasing requirement inappropriate from a public policy standpoint. We describe these in greater detail below.

b. AT&T

AT&T expects to deploy synchronous optical network ("SONET") rings in certain market areas in order to establish facilities-based competition with NYNEX. It argues that allowing access to NYNEX's unused fiber under reasonable terms and conditions will promote and accelerate the development of facilities-based competition, which will benefit customers in the state. It will enable such an acceleration, says AT&T, because it will permit AT&T to avoid obtaining rights-of-way, conduit, duct and pole space and will reduce the amount of construction needed to build facilities. AT&T says that NYNEX's technical concerns about allowing AT&T access to dark fiber are without merit.

3. Analysis and Findings

The question of whether dark fiber should be considered an unbundled network element for purposes of resale was left unresolved by the FCC. Local Competition Order at ¶ 450. Therefore, we must determine whether it should be, based on the conditions relevant to this jurisdiction, and being mindful that any such requirements we might impose for resale are consistent with the Act and the Local Competition Order. Local Competition Order at ¶¶ 243-244. The standard we apply to determine whether dark fiber should be made available for resale as an unbundled network element is whether it represents an essential discrete service whose lack of resale would represent a bar to effective competition in the Massachusetts telecommunications marketplace. If so, we must further examine whether it is physically practical to offer such a service. If both conditions are met, we must determine the appropriate pricing

methodology for it.

Dark fiber has both similarities to and differences from the other unbundled network elements for which we are determining prices for resale. It is similar in that it is physically part of the local exchange telecommunications network owned and controlled by an ILEC. It is present in both interoffice transport and feeder portions of that network. The fact that, by definition, dark fiber is currently unused in the provision of service to customers does not distinguish it from other portions of the network. Virtually all portions of the network are designed to have surplus capacity relative to that which would be needed to meet current levels of demand (see, e.g., Tr. 8, at 218-222; Tr. 9, at 46-50). This would be especially expected in the case of fiber, as it is common practice for an ILEC to install much more capacity than is currently needed because of the dramatic economies of scale involved in the installation of this equipment (Tr. 5, at 14; Tr. 8, at 252-253, 263-267).

Dark fiber is different from other unbundled network elements in that it uniquely describes itself as an element. A contrasting example or two might make this distinction clear. In naming the local loop as an unbundled network element, we describe a telecommunications function, not a unique piece of equipment. A local loop consists of a number of pieces of equipment (e.g., distribution cable, feeder, loop concentrator), many of which can be provided by a variety of types of equipment. For example, feeder might be constructed of either copper cable or fiber strands. Likewise, switching, another unbundled network element, is a function that might be provided by any of a number of types of switching equipment. In the case of these elements, it is the

functionality of the element that is being offered for resale to a competitive carrier, however that functionality might be provided by the ILEC. In the case of dark fiber, the functionality and the equipment itself are uniquely paired. The competitive carriers seek to purchase dark fiber because it is fiber. As such, it offers unique physical capabilities that they view as having value. If it were copper, they would not be interested in purchasing it for those purposes (Tr. 5, at 13-16, 28-33).

The purposes set forth by the competing carriers include the same purposes for which NYNEX uses fiber in Massachusetts, i.e., construction of a SONET ring, a configuration of optical fiber and other facilities that enables a carrier to monitor and maintain service to a given geographic area. SONET rings can take the form of "backbone rings," very large rings connecting a number of serving offices, or access rings, connecting a smaller geographic region within a serving office (Tr. 5, at 30-31; also pictorially presented in Exh. NYNEX-11, Exhibit C, pp. 1-6). The ring-type of system architecture is an important and generally accepted standard in the industry and specifically in Massachusetts (Tr. 5, at 67; Tr. 6, at 27-29; Tr. 11, at 11-12). It enables a carrier, for example, to detect a cut in a cable and redirect service so that the customer does not experience an interruption (Tr. 5, at 14). This is obviously of importance to the types of large business customers located in this state, whose voice and data telecommunications traffic flows have commercial value, but it is also important to the large number of smaller customers whose service quality is better maintained through the existence of such rings (Tr. 11, at 13-14). Accordingly, we find, on the basis of the evidence presented, that the use of fiber in SONET rings is an essential part of Massachusetts local exchange service.

Having established the essential nature of the underlying architecture, we now turn to the question of whether the provision of a component of that architecture should be made available by NYNEX to competing carriers. Here, too, we find a direct analogy with other unbundled network elements. The purpose of the Act and the Local Competition Order, in requiring the provision of unbundled network elements, is to offer competing carriers a choice in the how to configure their facilities-based and non-facilities-based networks. Simply put, they are given the option of buying complete service packages from the ILEC or buying unbundled elements which they then can combine with their own facilities to create complete service packages. The Act envisions that competing carriers will make use of an ILEC's unbundled facilities to the extent that it is commercially advantageous to do so, especially where the physical placement of the ILEC's facilities would otherwise provide the ILEC with a competitive advantage. 47 U.S.C. § 251(c)(3).

Mr. Falcone stated quite directly that such was the intent of AT&T in seeking to purchase access to dark fiber: "To the extent that NYNEX already has this cable in the ground with spare capacity . . . AT&T would like the right to lease that fiber . . . to help us build our network to help us so we can compete in the state" (Tr. 5, at 14-15). He also offered persuasive testimony that there are likely to be circumstances in which leasing of dark fiber from NYNEX would be more efficient for a carrier than that carrier building its own fiber facilities (id. at 35, 47). This situation is analogous to that facing competitive carriers choosing whether to provide their own

loops, switching, and other unbundled network elements or to lease them from NYNEX.[4]

In light of this evidence, we find that dark fiber is an essential discrete service whose lack of resale would represent a bar to effective competition in the Massachusetts telecommunications marketplace. In this respect, it is analogous to the other components of service which the FCC has determined should be made available for resale as unbundled networks elements. Accordingly, we conclude that dark fiber should be defined to be an unbundled network element. We now turn to the question of whether there are practical reasons that should foreclose the availability of this element for resale.

We have considered NYNEX's contentions that resale of dark fiber would create untenable logistical difficulties, and we find them to be without merit. We take them in order. First, NYNEX expresses concern that it would have to determine if there is dark fiber in the places that AT&T is requesting it. This would require a review of its records and possibly engaging in site surveys. This is certainly true, but we cannot imagine that it poses an insurmountable difficulty. It appears to us to be exactly parallel to the kind of work that NYNEX would have to do to determine whether it had sufficient fiber capacity for new customers or increased usage for its own purposes along a given route.

Second, NYNEX objects to non-NYNEX personnel entering its fiber vaults for purposes of making an interconnection with a competing carrier's network. While we fully expect that

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[4] In fact, AT&T's proposal is less demanding than that required of NYNEX for other network elements, for NYNEX has the obligation to provide other elements even if there is no spare capacity.

competing carriers will hire network technicians with technical ability on a par with those of NYNEX, we recognize that there may be some differences in operating procedures and technical standards among these organizations. NYNEX's objection, however, is easily remedied (id. at 78). As in the case of provisioning other unbundled network elements to competing carriers, NYNEX will retain the right to establish the physical connection with its own personnel.

Third, NYNEX contends that the lease of particular fiber segments leaves it with the potential of having "stranded," i.e., unusable, strands at either end of the segments in question, making future network planning difficult. We find this argument to be unpersuasive, given the unanimous testimony cited above by NYNEX and other witnesses concerning the dramatic overcapacity built into fiber circuits. Notwithstanding this point, we find that NYNEX's concern is remedied by AT&T's statement that it only seeks to interconnect with NYNEX's fiber at existing splice points. Those splice points are designed for NYNEX, itself, to use as junction points in its network. While we understand that NYNEX has attempted to design its system to minimize the number of times it needs to resplice its fibers, it must conduct such resplicing from time to time, sometimes in excess of the number of times it might have planned (id. at 72-75). Thus, in the case of a NYNEX splice off of a fiber circuit, there also is the possibility that such a splice will leave the "downstream" portion of that fiber unusable. We therefore see little distinction between a splice performed on behalf of NYNEX and that performed for another carrier. However, in a particular case where NYNEX believes that a request by another carrier for lease of its dark fiber would "strand" an unreasonable amount of fiber, then NYNEX will be

allowed to petition the Department for relief from its obligation.

Finally, we find NYNEX's concerns about billing also to be unpersuasive. NYNEX asserts that unbundled elements should have identifiable billing parameters which provide for quantification of the level of use of the network elements and a format that is amenable to recording and billing. It states that this is not possible for the utilization of dark fiber because there is an unlimited range of possible capacities of the fiber. Our view is that it should be quite straightforward to determine an appropriate price for dark fiber, using the same kind of incremental costing methodology we are using for all other unbundled network elements. We recognize that, in this case, the price might be based on the length of fiber, the type of fiber, and perhaps the physical placement (aerial versus underground), rather than the degree of use to which the fiber is put, since it may be these other parameters that are the primary determinants of cost. These parameters, however, should present no insurmountable costing and pricing obstacle to NYNEX, as they are precisely the metrics that are used throughout its unbundled element costs studies, particularly in defining the costs of local loops and transport services (Exh. NYNEX-11 and associated workpapers and information responses).

Accordingly, we conclude that it is physically practical to offer dark fiber as an unbundled network element. Before turning to the pricing issue, however, we address one final concern, whether NYNEX does not have to make available for resale a particular fiber circuit that may have been installed by NYNEX to serve growth in a particular part of its network. We accept AT&T's suggestion that, if NYNEX has a bona fide reason to reserve some dark fiber strands

(e.g., they have been installed or allocated to serve a particular customer in the near future), it need not make those available for resale (Tr. 5, at 34-35). Such a reason, however, must be clearly documented, lest it be used as an artificial barrier to competition. Thus, a general statement by NYNEX that a fiber is needed for unspecified or general future growth, or even for a particular customer's potential long-term growth, will not suffice to relieve it of its obligation to offer the dark fiber for resale. We believe that this and the other requirements we impose with regard to the offering of dark fiber as an unbundled network element are consistent with the Act and the Local Competition Order.

On the pricing issue, having determined that dark fiber should be offered by NYNEX for resale as an unbundled network element, we conclude that the same pricing methodology used for other unbundled network elements should be applied to dark fiber. For purposes of this arbitration, that is the TELRIC methodology, the application of which is further defined in Phase 4. NYNEX is directed to prepare a study using the TELRIC methodology approved in the Department's Phase 4 Order and submit the result within 30 days of the date of that Order.

H. AIN Triggers

1. Introduction

An AIN trigger is a function that interrupts a switch's normal processing of a call to activate a query to a remote switch to obtain further call processing requirements which are sent back to the host switch. AIN allows features to be added to a database that is accessed by a switch. This permits a carrier to add a new service or feature through changes only in the